

(15)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

DATED THIS

5th June 1992

Present:

Hon'ble Justice Shri Ram Pal Singh

.. Vice-Chairman (J)

Hon'ble Shri P.S. Habeeb Mohamed

.. Member (A)

APPLICATION NO. 52/1986

M.L. Sharma,
S/o Shri D.R. Sharma,
Income Tax Inspector,
Commissioner of Income Tax,
Ministry of Finance,
Deptt. of Revenue,
Delhi.

.. Applicant

(Mr. Govardhan, Advocate)

V.

1. Union of India through
Ministry of Home Affairs,
Department of Personnel and A.R.
North Block,
New Delhi-1

.. Respondents

2. Union of India through
Ministry of Finance,
Deptt. of Revenue,
Office of the Commissioner of
Income Tax,
Delhi-1

(Shri P.H. Ramchandani, Advocate)

This application having come for orders
before this Tribunal today, Hon'ble Shri P.S. Habeeb
Mohamed, Member (A), made the following:

ORDER

1. Shri M.L. Sharma who was Income Tax Inspector in
the Office of the Commissioner of Income Tax, (Delhi) had filed
this O.A. under section 19 of the Administrative Tribunals
Act 1985 for the issue of directions by the Tribunal for

...2/-

protecting his rank and restoring to him a Class-II post and giving him monetary benefits on the analogy of one Shri A.S. Bhutani and S.C. Sharma who were his juniors. The case of the applicant is that while he was working as an Assistant Custodian of Evacuee Properties (Class-II post) he was declared surplus and was absorbed in the office of the Commissioner of Income Tax (Delhi), Ministry of Finance. He was appointed to a non-gazetted post and his pay was protected as personal to him. In the case of 18 others whose names are mentioned in the application the respondents protected their pay and their rank but it was not so done in the case of the applicant. One AS Bhutani whose case was similar to that of applicant got orders from the Hon'ble High Court Delhi and so also one SC Sharma was given by the Hon'ble Supreme Court in LPA No.178/1980 the same benefits as given in the case of Shri Bhutani but the applicant got no benefits, he was not given the proper pay and hence he has come up with this O.A. making the prayers as mentioned earlier. It was brought to the notice of the Tribunal that the applicant Shri M.L. Sharma died on 13/2/1987 and his L.R.s. have been brought on record.

2. The reply by the respondents is to the effect that he was holding the post in the Ministry of Rehabilitation on an officiating basis and there was no equivalent post for him and he was posted as Income Tax Inspector, a Class-III job. He had accepted the post. The 17 persons whose names are mentioned in the application were given the pay scales on the merits of each case. It is also stated that Shri S.C. Sharma along with one B.S. Kalra and Kartar Singh filed writ petitions No.719/71, 627/72 and 871/72 in the Hon'ble High Court of Delhi. The Hon'ble High Court on disposing of their cases stated "It would appear, therefore that the redeployment scheme was a well thought out policy decision of the Government. It was a valid and enforceable

scheme and has, in fact, been acted upon. It is not a matter of concession but created legal rights." In rejecting the case of the petitioners mentioned above the Hon'ble High Court stated as follows:

"In Civil Writ petition Nos. 719 of 1971, 627 of 1972, and 871 of 1972, it appears, as above noticed, that though the petitioners were not financially at a disadvantage, having carried their pay scale with them, where these were lower in the new posts, they were at a disadvantage by being placed in non-gazetted posts. A genuine endeavour to find equivalent posts had to be made in accordance with the Scheme, which was not done. It is stated at the bar that these three petitioners are still in these non-gazetted posts. A real endeavour in terms of Scheme to try and find gazetted Class II posts from them was necessary and it should be made even now. The detriment caused to these three petitioners would not be completely remedied. But if they are accommodated in Gazetted Class II posts, even now, as a result of a genuine endeavour, they would get some relief. The Government is directed to make this endeavour to try and find them an equivalent posts. These writ petitions are, therefore, allowed to this extent but there will no order as to costs."

"The Government is directed to make this endeavour to try and find them ~~and~~ equivalent posts. These writ petitions are, therefore, allowed to this extent but without costs".

No appeal was filed against this judgement of the High Court. Subsequently Shri SC Sharma was posted as Income Tax Officer but he again moved LPA No. 178 in the Delhi High Court claiming that retrospective effect should be given to his promotion on the basis of the earlier orders of the High Court but his LPA was dismissed in limine by the Division Bench of the Delhi High Court and Shri Sharma ^{had} ~~was~~ filed an SLP against it in the Supreme Court. The case of Bhutani is mentioned in detail in the reply. As regards SLP filed by Shri SC Sharma in the Supreme Court it was originally decided to contest the SLP but the matter was re-examined in consultation with the Government Advocate ^{and} Government gave him benefits based on the Supreme Court Judgement.

3. The counter further says the case of the applicant is not similar to either S.C. Bhutani's or S.C. Sharma's. His case is nearer to the case of one Shri R.H. Vaswani who filed a Writ Petition in the High Court of Delhi but it was dismissed on grounds of laches. The case of the applicant has to be seen in the context of Vaswani's case.

4. As for his pay, as per records the allegation made that the applicant was stagnating at the stage of Rs.800/- was not correct. The counter states as follows:

"As regards his allegation about stagnating at the stage of Rs.800/- which was the maximum of the erstwhile pay scale of an Income Tax Inspector (i.e. Rs.425+800) it is submitted that this is a deliberate mis-statement. Firstly, the pay scale of the post of Income Tax Inspector was revised to Rs. 500-900 in 1983, with effect from 1.1.1980 (Annexure R-3), before his retirement. This fact has obviously been deliberately suppressed by the petitioner. Secondly, according to the orders contained in the then Department of Personnel & Administrative Reforms O.M.No. 1/8/83-CS.III, dated the 19th January, 1984 (Annexure R-4) the surplus employees who had been redeployed through the Central (Surplus Staff) Cell were to be allowed with effect from 1.1.1973, the revised scale of pay corresponding to the pre-revised scale of pay allowed earlier as personal to them and that they could also claim arrears of pay with effect from 1.1.1973. From the information available in the Department of Revenue, office of the Commissioner of Income Tax, Northern Region, it is observed that consequent on the aforesaid decision of the Government to allow revised scale of pay to the re-employed surplus employees w.e.f. 1.1.1973, Shri M.L. Sharma did apply for refixation of his pay in the revised scale of Rs.650-960 and his pay was refixed w.e.f. 1.1.1973 and the arrears amounting to Rs. 22001.65 as a result of this refixation have also been paid to him on 16-10-1984. It is further observed that Shri M.L. Sharma retired from Government service on superannuation w.e.f. 31.3.1983 and the last pay drawn by him at the time of his retirement was Rs. 960/-+Special pay of Rs.55/- p.m. i.e. Rs. 1015/- p.m. Therefore, his allegation that he was retired at the maximum of Rs.800/- without allowing him the revised scale of pay on the basis of the recommendation of the third Pay Commission is wrong, baseless and malafide (Annexure R-11 & 12)."

There is no answer to this in the rejoinder filed by the applicant.

...5/-

5. We have heard the learned counsel for the L.Rs of the applicant and the learned counsel for the respondents (Shri Govardan for the applicant and Shri Ramchandani for the respondent).


6. After hearing the counsels for the parties we find that there are certain prayers for reliefs which do not survive the death of the applicant, ^{vide the} ~~In the~~ case of Smt. Smt. Sudha Srivastava vs. the Comptroller and Auditor General of India (1990 ¹³ ~~38~~ ATC 184). It was a case of promotion taken up by L/Rs of an officer after his death. The Tribunal had taken the view:

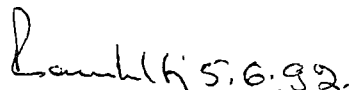
"It falls to be examined whether despite the demise of the officer the aforesaid exercise contained in the instructions is to be had. When it cannot be disputed that the right to be considered for promotion is purely personal to civil servant, it cannot also be disputed that equally personal is the entitlement to be promoted and the right for enforcement of the promotion where he is found suitable on such consideration. As such, if after the consideration for promotion, and before the actual grant of promotion, he dies, nothing survives, albeit the outcome of the consideration being in his favour."

7. In this case, the applicant has filed the case, and he died after filing of the case but the principle will apply.

8. We find no discrimination has been established as between his case and Shri Bhutani's case and Sharma's. Though in the rejoinder, filed by the applicant, he has sought to establish the difference between Vaswani's case and his, the applicant only reiterates that his case is similar to that of Shri Bhutani's and S.C. Sharma's. According to him there are no latches. He states also that he accepted the post of Income Tax Inspector under protest, while Vaswani did not do so. However, we find, ^{even}

apart from latches and delayed representations,
there is nothing, to give him the benefit of extension
of judgements in Bhutani's case or S.C. Sharma's
case and no discrimination has been established.
In the circumstances we find no merit in the O.A.
filed by the applicant (now deceased and represented
by L/Rs.) and dismiss the same with no order as to
costs.


(P.S. HABEEB MOHAMED)
Member (A)


(RAM PAL SINGH)
Vice-Chairman (J)